

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SARA M. BARKER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

THRIVE CAUSEMETICS, INC., a Delaware
corporation; and KARISSA BODNAR, an
individual,

Defendants.

CASE NO. 2:18-cv-01470-TSZ

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: Personal or private identifying information relating to the
4 parties or putative class members or any other person; personal or private identifying information
5 relating to Defendants’ customers; Defendants’ financial information relating to sales, revenue and
6 profits; and confidential, proprietary, and/or trade secret information relating to Defendants’
7 products, finances, and/or donations.

8 3. “ATTORNEYS EYES ONLY” MATERIAL

9 “Attorneys Eyes Only” material shall include the following documents and tangible things
10 produced or otherwise exchanged: Personal or private information pertaining to individual
11 defendant Karissa Bodnar, Defendant Thrive’s customer lists and customer information;
12 Defendant Thrive’s sales data, and Defendant Thrive’s production cost data.

13 4. SCOPE

14 The protections conferred by this agreement cover not only confidential material and
15 attorneys eyes only material (as defined above), but also (1) any information copied or extracted
16 from confidential material and/or attorneys eyes only material; (2) all copies, excerpts, summaries,
17 or compilations of confidential material and/or attorneys eyes only material; and (3) any testimony,
18 conversations, or presentations by parties or their counsel that might reveal confidential material
19 and/or attorneys eyes only material.

20 However, the protections conferred by this agreement do not cover information that is in
21 the public domain or becomes part of the public domain through trial or otherwise.

22 5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 5.1 Basic Principles. A receiving party may use confidential material and/or attorneys
24 eyes only material that is disclosed or produced by another party or by a non-party in connection
25 with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential
26 material and/or attorneys eyes only material may be disclosed only to the categories of persons

1 and under the conditions described in this agreement. Confidential material and/or attorneys eyes
2 only material must be stored and maintained by a receiving party at a location and in a secure
3 manner that ensures that access is limited to the persons authorized under this agreement.

4 5.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the designating party, a receiving party may disclose any
6 confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation;

11 (c) experts and consultants to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the duplication of
15 confidential material, provided that counsel for the party retaining the copy or imaging service
16 instructs the service not to disclose any confidential material to third parties and to immediately
17 return all originals and copies of any confidential material;

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
21 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
22 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
23 under this agreement;

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

1 5.3 Disclosure of “ATTORNEYS EYES ONLY” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the designating party, a receiving party
3 may disclose any attorneys eyes only material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the court, court personnel, and court reporters and their staff;

7 (c) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information.

9 5.4 Filing Confidential Material or Attorneys Eyes Only Material. Before filing
10 confidential material or attorneys eyes only material or discussing or referencing such material in
11 court filings, the filing party shall confer with the designating party, in accordance with Local Civil
12 Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential or
13 attorneys eyes only designation, whether the document can be redacted, or whether a motion to
14 seal or stipulation and proposed order is warranted. During the meet and confer process, the
15 designating party must identify the basis for sealing the specific confidential or attorneys eyes only
16 information at issue, and the filing party shall include this basis in its motion to seal, along with
17 any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures
18 that must be followed and the standards that will be applied when a party seeks permission from
19 the court to file material under seal. A party who seeks to maintain the confidentiality of its
20 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party
21 filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being
22 denied, in accordance with the strong presumption of public access to the Court’s files.

23 6. DESIGNATING PROTECTED MATERIAL

24 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
25 or non-party that designates information or items for protection under this agreement must take
26 care to limit any such designation to specific material that qualifies under the appropriate

standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

6.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 6.2 below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" to each page that contains confidential material and/or attorneys eyes only material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or

1 exhibits thereto, as confidential and/ or attorneys eyes only. If a party or non-party desires to
2 protect confidential and/or attorneys eyes only information at trial, the issue should be addressed
3 during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent place
5 on the exterior of the container or containers in which the information or item is stored the word
6 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.” If only a portion or portions of the
7 information or item warrant protection, the producing party, to the extent practicable, shall identify
8 the protected portion(s).

9 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the designating party’s
11 right to secure protection under this agreement for such material. Upon timely correction of a
12 designation, the receiving party must make reasonable efforts to ensure that the material is treated
13 in accordance with the provisions of this agreement.

14 7. CHALLENGING CONFIDENTIALITY OR ATTORNEYS EYES ONLY
15 DESIGNATIONS

16 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality or attorneys eyes only at any time. Unless a prompt challenge to a designating
18 party’s confidentiality or attorneys eyes only designation is necessary to avoid foreseeable,
19 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
20 litigation, a party does not waive its right to challenge a confidentiality or attorneys eyes only
21 designation by electing not to mount a challenge promptly after the original designation is
22 disclosed.

23 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
24 regarding confidential or attorneys eyes only designations without court involvement. Any motion
25 regarding confidential or attorneys eyes only designations or for a protective order must include a
26 certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good

1 faith meet and confer conference with other affected parties in an effort to resolve the dispute
2 without court action. The certification must list the date, manner, and participants to the
3 conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

4 673 Judicial Intervention. If the parties cannot resolve a challenge without court
5 intervention, the designating party may file and serve a motion to retain confidentiality or attorneys
6 eyes only designations under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if
7 applicable). The burden of persuasion in any such motion shall be on the designating party.
8 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
9 unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions.
10 All parties shall continue to maintain the material in question as confidential or attorneys eyes only
11 until the court rules on the challenge.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
16 “ATTORNEYS EYES ONLY,” that party must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose confidential or attorneys eyes only material may be affected.

24 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
26 or attorneys eyes only material to any person or in any circumstance not authorized under this

1 agreement, the receiving party must immediately (a) notify in writing the designating party of the
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected
3 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
4 terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment
5 and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
11 is not intended to modify whatever procedure may be established in an e-discovery order or
12 agreement that provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 11. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all confidential or attorneys eyes only material to the producing party, including
17 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
18 methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
22 product, even if such materials contain confidential or attorneys eyes only material.

23 The confidentiality obligations imposed by this agreement shall remain in effect until a
24 designating party agrees otherwise in writing or a court orders otherwise.

25
26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1 DATED: January 24, 2019

2
3 **SARA BARKER**

**THRIVE CAUSEMETICS, INC. AND
KARISSA BODNAR**

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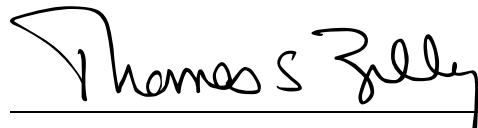
Attorneys for Defendants

18 **ORDER**

19 PURSUANT TO STIPULATION, IT IS SO ORDERED

20 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
21 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
22 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
23 documents, including the attorney-client privilege, attorney work-product protection, or any other
24 privilege or protection recognized by law.

25 DATED this 25th day of January, 2019.

26 

Thomas S. Zilly
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Sara Barker, individually and on behalf of all others similarly situated v. Thrive*
8 *Causemetics, Inc., a Delaware corporation; and Karissa Bodnar, an individual, Case No. 2:18-*
9 *cv-01470-TSZ*. I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____